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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES FORDJOUR,

Petitioner,

No. CIV S-09-1800 JAM EFB P

vs.

JANET NAPOLITANO, et al.,

Respondents.

ORDER

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Petitioner, currently in the custody of United States Immigration and Customs Enforcement, proceeds in pro per seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 2, 2010, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. Respondents filed objections on February 23, 2010, and petitioner filed a response to the objections on February 24, 2010.

In their objections, respondents withdraw their motion to dismiss, conceding that the Magistrate Judge correctly determined that petitioner is not detained under the mandatory

1 detention authority of 8 U.S.C. § 1226(C), and thus the Court does not lack jurisdiction over the  
2 case for that reason. Respondents submit a new argument for the denial of the petition on the  
3 merits, however, contending that petitioner has not exhausted his administrative remedies and  
4 has received all the process he was due. Petitioner, by his newly-appointed counsel, argues that  
5 exhaustion is not required and that denial of the petition at this stage would be improper as  
6 further factual development is necessary and as counsel needs additional time to review the  
7 relevant portions of the record. The Court finds that it would be premature, as well as  
8 procedurally improper, to rule on the merits of the petition in response to respondents'  
9 Objections to the Magistrate Judge's Findings and Recommendations. The Court is presently  
10 concerned only with the motions addressed by those Findings and Recommendations –  
11 respondents' motion to dismiss and petitioner's requests for injunctive relief. As respondents  
12 have conceded that the Magistrate Judge correctly determined the issues raised in the motion to  
13 dismiss, the Court will not entertain new arguments not concerned with that motion, or any other  
14 motion addressed by the Magistrate Judge's Findings and Recommendations, at this time.

15 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule  
16 304, this court has conducted a de novo review of this case. Having carefully reviewed the  
17 entire file, the court finds the findings and recommendations to be supported by the record and by  
18 proper analysis.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The findings and recommendations filed February 2, 2010, are adopted in full;
- 21 2. Respondents' November 12, 2009 motion to dismiss, Dckt. No. 46, is granted  
22 in part, and petitioner's allegations that he is not deportable are dismissed for lack of jurisdiction;
- 23 3. The remainder of respondents' November 12, 2009 motion to dismiss is  
24 denied;
- 25 4. Respondents are directed to file a response to the petitions in the consolidated  
26 cases (Civ. S-09-1800 JAM EFB P and Civ. S-09-2806 FCD CMK) within thirty days of this

1 order;

2 5. Petitioner's October 30, 2009 motion for preliminary injunctive relief, Dckt.  
3 No. 45, is denied; and

4 6. Petitioner's requests for expedited ruling, Dckt. No. 47, and status, Dckt. No.  
5 53, of his motion for preliminary injunctive relief are denied as moot.

6 DATED: April 20, 2010

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/s/ John A. Mendez  
UNITED STATES DISTRICT JUDGE

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